

Gregory Mendoza
Governor



Stephen Roe Lewis
Lieutenant Governor

GILA RIVER INDIAN COMMUNITY

Executive Office

"A New Generation of Leadership Serving the People"

May 25, 2012

Nancy Rumrill
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

**Re: Request for Consultation on the Underground Injection Control Program
Permit applied for by Curis Resources Ltd.**

Dear Ms. Rumrill:

This letter follows up on my May 3, 2012, letter expressing the Gila River Indian Community's ("Community") concern about Curis Resources Ltd.'s proposed *in situ* leach mining project in the Town of Florence, Pinal County, Arizona. As you are aware, pursuant to the May 2, 2011 *EPA Policy on Consultation and Coordination with Indian Tribes* consultation on a government-to-government basis is imperative when EPA actions and decisions can have severe implications on the culture and resources of a Tribe. The gravity of the concerns facing the Community due to the proposed Florence Copper Project ("Project") and the EPA's Consultation Policy necessitate that formal consultation take place in a substantive manner prior to any EPA action or decision.

On March 29, 2011, Curis Resources Ltd. ("Curis") submitted an Underground Injection Control Program Permit application ("Application") for operation of an *in situ* leach mine in Florence, Arizona. The Application was submitted in response to a letter sent from Region 9 of the EPA to Curis seeking a new submission after modifications were made to an earlier approved permit. In addition to concerns over the modifications to the initial permit, the EPA expressed concern that the Project would have potentially negative impacts on residential development and drinking water wells in the Town of Florence. While the EPA's concern was proper with respect to the Town of Florence, the Agency has yet to consider the Project's impact on the Community, or acknowledged EPA's trust responsibility with respect to the Community and the need to engage in meaningful government-to-government consultation, as mandated in the EPA's Consultation Policy.

The EPA's Consultation Policy expressly recognizes that consultation is appropriate where the EPA is determining whether to issue a permit that will affect a tribe.¹ Although the lead EPA program office tasked with approving the action must assess whether consultation is appropriate, tribal officials may also request consultation. The Consultation Policy dictates that the EPA must attempt to honor the request in consideration of the nature of the activity, available resources, and timing considerations, among other factors.² Indeed, the Community has already contacted the EPA to express concern over the project and in doing so, is cognizant that ample time exists for meaningful consultation before the EPA must render a decision on the Application.

There is no doubt that the EPA's decision to approve the Application will implicate its federal trust responsibility towards the Community. As a federal agency, the EPA has "moral obligations of the highest responsibility and trust" when dealing with tribal property.³ One of the fundamental principles of the EPA's formal Consultation Policy with tribes is that the agency "will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions affect reservation environments."⁴ EPA has also stated that "[i]n keeping with the trust responsibility, the Agency will endeavor to protect the environment interests of Indian tribes when carrying out its responsibilities that may affect the reservations."⁵

Here, the project is located in close proximity to the Gila River flood plain that extends downstream to the Community. The significance of the Gila River flood plain and the Gila River to the Community cannot be overstated. The proposed *in situ* leach mining method to be utilized under the project may have grave implications on the Community's rights to groundwater resources that are established under the Arizona Water Settlements Act.⁶ The Community worked hard to secure its water rights to the Gila River and groundwater and as an executive agency charged with upholding its trust responsibilities, the EPA must engage in consultation over potential impacts that the Project would have on these trust resources.

As trustee of these water rights and the agency charged to protect the Community from environmental action that could have an adverse impact on land and water resources, the EPA cannot issue a permit that undermines the Community's rights. Appropriate consultation under EPA's Consultation Policy is critical for the agency to fully understand and properly consider the impacts of this permit determination.

To ensure the "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications,"⁷ as required by the Consultation Policy, now is the appropriate time to initiate consultation. We understand that the EPA is actively considering a new permit for the Project. EPA needs to hear directly from the Community in considering this permit. As the Consultation Policy states, Tribes must be given the "opportunity to provide

¹ Consultation Policy at 5.

² Consultation Policy at 6.

³ *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

⁴ *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (Nov. 8, 1994).

⁵ *Id.*

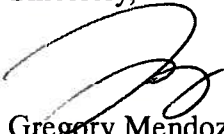
⁶ Arizona Water Settlements Act, Pub. L. No. 108-45- Dec. 10, 2004, 106 Stat. 3478.

⁷ Consultation Policy at 2.

meaningful input that can be considered *prior to* EPA deciding whether, how, or when to act . . .”⁸ Consistent with the agency’s trust obligations, impacts of EPA’s decision on the Community and the Town of Florence must be a key factor in issuing the permit.

The Community has a significant stake in the Florence Copper Project, which proposes the use of a potentially dangerous and unprecedented use of leach mining. The distinct possibility that the project will contaminate the Gila River and groundwater guaranteed as a right to the Community under the Arizona Water Settlements Act necessitates the need for immediate and meaningful consultation on the EPA’s decision to issue the project permit. To be meaningful, this consultation must occur before the EPA formally considers the Application. We look forward to the EPA initiating this important consultation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Mendoza', written over a horizontal line.

Gregory Mendoza, Governor
Gila River Indian Community

⁸ Consultation Policy at 7.